

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

V.

CRIMINAL ACTION  
NO. 21-20405

NOE GARZA,

Defendant.

\_\_\_\_\_/

MOTION TO SUPPRESS HEARING  
BEFORE THE HONORABLE MATTHEW F. LEITMAN  
United States District Judge  
600 Church Street  
Flint, Michigan  
Wednesday, February 9, 2022

APPEARANCES:

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- - -

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**I N D E X**

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1 Flint, Michigan

2 February 9, 2021

3 9:47 a.m.

4 - - - -

5 **CASE MANAGER:** The United States District Court for  
6 the Eastern District of Michigan is now in session, the  
7 Honorable Mathew F. Leitman presiding.

8 You may be seated.

9 The Court calls case number 21-20405, the United  
10 States of America versus Noe Garza.

11 Counsel, please state your appearances for the  
12 record.

13 **MR. DePORRE:** Good morning, your Honor. Jules  
14 DePorre, appearing on behalf of the United States.

15 **THE COURT:** Good morning.

16 **MR. LONGSTREET:** Good morning, your Honor. May it  
17 please this Honorable Court. Charles Oliver Longstreet, II,  
18 P-63205, appearing on behalf of Mr. Noe Garza, who is seated  
19 and appears to my left.

20 **THE COURT:** Good morning, and welcome to both of you.

21 We're here for a continuation of the evidentiary  
22 hearing on the motion to suppress that Mr. Longstreet filed.

23 My memory is not great, but I think when we last  
24 broke, there was some question about whether Ms. Montpas had  
25 received all of the reports, and were you going to get into

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1 that, or am I confusing this with one of the other evidentiary  
2 hearings I have going?

3 **MR. DePORRE:** No, your Honor. That is correct. We  
4 were in the middle of cross examination. I had previously done  
5 direct examination with Officer Steven Fisher, who, for the  
6 record, is seated to my right. If you would like him to leave  
7 the room briefly before we recall him to the stand, we  
8 certainly can, but the sort of stage that we were at was he was  
9 doing cross -- Mr. Longstreet was doing cross examination and  
10 he had a report that was different from the report that the  
11 officer had brought with him that day to refresh his  
12 recollection.

13 What we did is, since then, on January 12th, we  
14 produced additional discovery. We had a report that was  
15 printed December 24th, 2021, which was furnished to Defense  
16 counsel, along with some other discovery items, including a --  
17 basically a trail of how that report system had been -- who had  
18 had access to the report system and then also a policy for the  
19 inventory of vehicles for Metro PD.

20 **THE COURT:** Okay. Mr. Longstreet, do you believe you  
21 have everything that you would need to continue the cross  
22 examination now?

23 **MR. LONGSTREET:** I do.

24 **THE COURT:** Is there anything we need to do before we  
25 continue?

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1           **MR. DePORRE:** I just have one other item for the  
2 record today. Your Honor, we had subpoenaed two witnesses to  
3 appear today. Previously, we had subpoenaed three for the  
4 original hearing. They were Officer Steven Fisher, Lieutenant  
5 Johnson, Todd Johnson, and then Officer Ann Davies. We knew  
6 that Lieutenant Johnson would not be able to appear for today's  
7 hearing so we did not subpoena him for today's hearing.  
8 However, we did subpoena Officer Ann Davies, but,  
9 unfortunately, she had a Covid exposure in the last couple days  
10 and became symptomatic this morning. So she was not able to  
11 appear today. She would not have cleared the Court's  
12 screening, and so she is -- she is not available for testimony  
13 today. I spoke with Mr. Longstreet and I let him know about  
14 that as well.

15           **THE COURT:** Is she somebody that you guys need?

16           **MR. DePORRE:** I intended to call her, depending on  
17 how cross examination was going to go today or what issues were  
18 raised. I can't say that she's definitely someone we need,  
19 though.

20           **THE COURT:** Does it make sense then to take it one  
21 step at a time to resume and complete the cross examination of  
22 our first witness and then talk about what we think our next  
23 steps are?

24           **MR. DePORRE:** I think that's an excellent plan, and I  
25 think it's -- that's a great plan.

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1           **THE COURT:** Okay. Mr. Longstreet, does that plan  
2 work for you?

3           **MR. LONGSTREET:** It most certainly does work for me,  
4 yes.

5           **THE COURT:** Okay. Let's bring our witness back and  
6 go ahead.

7                           **STEVEN FISHER**  
8 Was thereupon *recalled* as a witness herein, and, after having  
9 First been duly sworn at about 9:44 A.M., was examined and  
10 Testified as follows:

11           **THE COURT:** Okay. Officer, welcome back. Make  
12 yourself comfortable. If you don't mind, would you please take  
13 off your mask, and, as you did last time, please keep your  
14 voice up and speak slowly, and we will work our way through  
15 this. Nice to see you again.

16           **THE WITNESS:** Yes, sir.

17           **THE COURT:** Okay. Mr. Longstreet, go ahead.

18           **MR. LONGSTREET:** Thank you.

19                           **CROSS EXAMINATION(continuing)**

20           **BY MR. LONGSTREET:**

21           **Q.** Again, good morning, Officer.

22           **A.** Good morning.

23           **Q.** Again, state your name for the record?

24           **A.** Officer Steven fisher. S-t-e-v-e-n. F-i-s-h-e-r.

25           **Q.** I see you shaved your mustache or beard?

**A.** I did, yes.

**Q.** And were you so employed with the Metro Police Department

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1 on the date of December 1st, 2020; is that correct -- excuse  
2 me, November 26th, 2020; is that correct?

3 **A.** Yes, sir.

4 **Q.** Okay. And on that particular day, you testified  
5 previously you went to the Meijer's store to investigate  
6 shoplifting, correct?

7 **A.** I was at this Meijer's store already on an unrelated  
8 investigation that likely would have been shoplifting, but it  
9 was not.

10 **Q.** All right. So that morning at about 9:00 or at 9:30, you  
11 were dispatched to the Meijer's location to loss prevention,  
12 correct, on this particular day?

13 **A.** I don't know if I was dispatched or not. It might have  
14 been a follow up.

15 **Q.** Okay. All right.

16 At a certain point, you spoke with -- on that particular  
17 day, you spoke to Jodi Montpas of the loss prevention  
18 supervisor of the Meijer's store; is that correct?

19 **A.** Correct.

20 **Q.** And you spoke to her as a part of an investigation into a  
21 shoplifting that was occurring at the store on that day,  
22 correct?

23 **A.** It was brought up while I was making contact with her,  
24 yes.

25 **Q.** And during this contact with Ms. Montpas, she indicated

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1 that, at a certain point, that the suspect had left the store  
2 and was going to a gray -- excuse me, a white Pontiac Grand  
3 Prix, correct?

4 **A.** Correct, at some point, yes.

5 **Q.** Okay. Now, at a certain point, prior to you going to that  
6 white Grand Prix, you spoke to loss prevention, correct?

7 **A.** I was with Ms. Montpas. We -- myself --

8 **Q.** No, excuse me.

9 The question is: Did you talk to loss prevention prior to  
10 walking to the white Grand Prix?

11 **A.** Yes, sir.

12 **Q.** Okay. And when you spoke to loss prevention, prior to  
13 walking to the white Grand Prix, you had had a description of a  
14 suspect, correct?

15 **A.** That's correct.

16 **Q.** Okay. And the description that you had was of a white  
17 male, correct?

18 **A.** Correct.

19 **Q.** All right. Now, is it true to say, sir, that prior to  
20 walking to the white Grand Prix, that you were told by  
21 Ms. Montpas that they did not observe the person conceal  
22 anything prior to walking to the white Grand Prix?

23 **A.** That's not my recollection.

24 **Q.** Okay.

25 Would reading Ms. Montpas' report refresh your



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1 recollection as to the information you had about the suspects  
2 prior to walking to the car?

3 A. Possibly.

4 Q. All right. One last question before I present this to  
5 you, you walked to the car with Sergeant Johnson, correct?

6 A. I wouldn't say we were next to each other the entire time,  
7 taking different paths through the parking lot.

8 Q. Let me be more specific. Were you accompanied by Johnson  
9 when you walked to the white Grand Prix?

10 A. I suppose so, yes.

11 Q. And were you working together --

12 A. No.

13 Q. -- with Sergeant Johnson at the time?

14 A. No.

15 Q. Okay.

16 MR. LONGSTREET: I just need a moment, Judge.

17 THE COURT: Take your time.

18 MR. LONGSTREET: Thank you.

19 BY MR. LONGSTREET:

20 Q. Have you, during this investigation, read the narrative  
21 report of Meijer's loss prevention at any point?

22 A. Yes.

23 Q. Okay. Loss prevention.

24 MR. LONGSTREET: May I approach the witness?

25 THE COURT: Sure.

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1 **BY MR. LONGSTREET:**

2 **Q.** Sir, can you please tell me what I've handed you, for the  
3 record, by the document, please?

4 **A.** It says, "incident narrative," appears to be from Meijer's  
5 loss prevention.

6 **Q.** Thank you.

7 Sir, can you read that document to yourself?

8 **THE COURT:** Does it have a date or author that you  
9 could also help us with?

10 **THE WITNESS:** Would you like me to answer you right  
11 now, sir?

12 **THE COURT:** Please.

13 **THE WITNESS:** It says in the narrative it's written  
14 by Adam Stokes.

15 **BY MR. LONGSTREET:**

16 **Q.** Is that a person of Meijer's loss prevention?

17 **A.** Yes, sir.

18 **Q.** All right.

19 And have you had an opportunity to review the loss  
20 prevention documents from Meijer's as a part of your  
21 investigation into this particular matter?

22 **A.** My investigation was complete before this report was  
23 received.

24 **Q.** But you read it as part of your job?

25 **A.** I have, yes.

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1 Q. Okay. Now, on the bottom of the document, do you see  
2 where it says that "Ms. Montpas told Johnson we did not see  
3 concealment prior to Johnson walking to the car"? Do you see  
4 that at the bottom paragraph, highlighted, clear as day?

5 A. There's two highlighted sections, sir.

6 Q. The bottom highlight?

7 A. The bottom highlights.

8 Q. You were told, prior to walking to the car, no one saw  
9 concealment?

10 THE COURT: Mr. Longstreet, can I ask do you mind  
11 staying on the microphone? I want to make sure I can hear your  
12 question loud and clear. I'm getting old; my hearing is going.

13 THE WITNESS: The bottom highlighted section doesn't  
14 read that. The top highlighted section talks about that. Let  
15 me read it real quick.

16 BY MR. LONGSTREET:

17 Q. It does say you were told that no one saw concealment  
18 prior to walking to the white Grand Prix?

19 A. That's not what it says, sir.

20 Q. That's not -- what does it say?

21 A. It says -- again, and this is a report from Adam Stokes,  
22 saying that "Sergeant Johnson was told by Ms. Montpas that they  
23 did not have concealment of the items."

24 Q. Thank you.

25 And could you review --

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1                   **MR. LONGSTREET:** May I approach?

2                   **THE WITNESS:** Well, no. Concealment means just what  
3 it says, concealment. It means putting something --

4 **BY MR. LONGSTREET:**

5 **Q.** Hiding something?

6 **A.** Hiding something.

7 **Q.** In your experience, sir, hiding something means that they  
8 were hiding it to walk out the store, correct?

9 **A.** Could be hiding while they were in the store, sir.

10 **Q.** Okay. But also in order to have a theft, the items have  
11 to be somewhat concealed, right, hidden from view?

12 **A.** Not necessarily.

13 **Q.** But in your experience, you know that shoplifters --  
14 because we talked about your experience in shoplifting?

15 **A.** Correct.

16 **Q.** And stakeouts and outlooks and we talked about that,  
17 right?

18 **A.** We did.

19 **Q.** So, in your experience, we know that thieves conceal what  
20 they steal, right?

21 **A.** Not exclusively, sir.

22 **Q.** Okay.

23                   You're just not going to answer any of my questions  
24 directly?

25                   **THE COURT:** That was a direct answer.

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1                   **MR. LONGSTREET:** Okay. Very well. I'll move on,  
2 Judge.

3 **BY MR. LONGSTREET:**

4 **Q.** Now, you indicated during cross -- I mean during direct  
5 examination on our first date that there was only one suspect  
6 in the car; is that correct?

7 **A.** No, sir. There's two in the car.

8 **Q.** Okay.

9 Did you testify there was only one suspect?

10 **A.** No.

11 **Q.** Okay.

12 You didn't testify to that during direct examination --

13 **A.** No.

14 **Q.** -- that there was only one suspect in the car and that  
15 suspect was Garza? You didn't testify to that during direct  
16 examination on the first date you testified?

17 **A.** No, I did not.

18 **Q.** All right.

19 Now, there's two suspects in the car, correct?

20 **A.** That's correct.

21 **Q.** All right.

22 And your report indicates that you knew who the theft  
23 suspect was, correct?

24 **A.** No.

25 **MR. LONGSTREET:** May I approach the witness?

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1           **THE COURT:** Yes. You do not need to keep asking.

2           **MR. LONGSTREET:** Pardon me?

3           **THE COURT:** You do not need to keep asking. You can  
4 approach when you need to.

5 **BY MR. LONGSTREET:**

6 **Q.** Sir, I'm handing you a document. Can you please tell us  
7 what this document is, sir?

8 **A.** This is my police report.

9 **Q.** Okay.

10 And in that police report, does it indicate there was two  
11 suspects?

12 **A.** Yes, it does.

13 **Q.** Okay.

14 And does it indicate that the suspect that was stealing  
15 was, and it's marked up, correct?

16 **A.** Yes.

17 **Q.** And that suspect is not Garza, correct?

18 **A.** The problem is I did not know that at the time.

19 **Q.** Respectfully, sir, that person is not Garza, correct?

20 **A.** I think --

21 **Q.** It's yes or no question, sir.

22 **A.** Mr. Garza was not in the store, no.

23 **Q.** And Mr. Garza was not the suspect you were looking for,  
24 was he?

25 **A.** He was not the -- he did not match the description of the

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1 suspect.

2 Q. Thank you.

3 And, sir, your report says, specifically, "two suspects,  
4 later identified as Noe Garza and 'redacted' the rear driver's  
5 side. 'Redacted person' was the suspect who was observed  
6 concealing merchandise."

7 That's what your report says, correct?

8 A. That is what it says, yes.

9 Q. And that suspect was not Garza, correct?

10 A. Again, it's a timeline issue that we're I guess arguing  
11 about here.

12 MR. LONGSTREET: I will respectfully ask that the  
13 Court instruct the witness to answer my question directly.

14 THE COURT: Was Garza the person in the store?

15 THE WITNESS: No, sir, he was not the person in the  
16 store.

17 BY MR. LONGSTREET:

18 Q. Thank you.

19 A. But it's -- the police report, for clarity, might explain  
20 who somebody is early on before in realtime at the time of the  
21 incident that I knew who these people were, how they were  
22 affiliated with the incident.

23 Q. Sir, to be more specific, you had, at the time that you  
24 walked to the white Grand Prix, Mr. Garza wasn't a suspect,  
25 correct?

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1     **A.**     I did not know that.

2     **Q.**     Okay. Mr. Garza wasn't in the store, correct?

3     **A.**     I did not know that.

4     **Q.**     No one gave you a description of Garza, correct?

5     **A.**     I was given a description of a person who was then told to  
6     me to have entered the white Grand Prix. When I approached the  
7     white Grand Prix, Mr. Garza was the only person that I saw.

8     **Q.**     Okay. He didn't meet the description?

9     **A.**     No, and --

10    **Q.**     Thank you.

11            You had no indication or information that Mr. Garza was a  
12    lookout, correct?

13    **A.**     Again, it's based on my training and experience --

14    **Q.**     Respectfully, sir, you had -- listen to my question. You  
15    had no information that suggested Garza was a lookout, correct,  
16    sir?

17    **A.**     No.

18    **Q.**     All right.

19            You had no information that Mr. Garza was ever outside of  
20    the white Grand Prix, correct?

21    **A.**     No.

22            **THE COURT:** Just so we're clear, do you understand  
23    how this record now reads? You asked him, "Correct?" And his  
24    answer was "no." So he did not agree with either of your two  
25    questions.



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1                   **MR. LONGSTREET:** I understand.

2                   **THE COURT:** Just if we're trying to make a record  
3 where we're all -- I think I understand what he meant. I think  
4 you do, but just so the record is clear, it's probably  
5 worthwhile to ask these questions again to make sure that if  
6 your question is "Correct?" and you want him to agree with you,  
7 that his answer is "yes" rather than "no."

8                   **MR. LONGSTREET:** I understand, sir. Thank you.

9 **BY MR. LONGSTREET:**

10 **Q.** I'm asking you the question again, sir: Again,  
11 Mr. Garza -- excuse me, I forgot the question. Let me go back.

12                   **THE COURT:** I didn't mean to interrupt you,  
13 Mr. Longstreet. I just want to make sure that we're  
14 eliminating possible ambiguities in the record.

15                   **MR. LONGSTREET:** I do understand what you mean.  
16 That's why I'm thinking of a way to reask the question.

17                   **THE COURT:** Okay. Thank you.

18 **BY MR. LONGSTREET:**

19 **Q.** Again, you had no information that Mr. Garza was a  
20 lookout?

21 **A.** I had no information of that.

22 **Q.** Thank you. You had no information that Mr. Garza was  
23 outside of the vehicle at any point?

24 **A.** No information of that.

25 **Q.** Thank you.

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1           You had no information that Mr. Garza had stolen anything,  
2 correct?

3   **A.**   Information that a person that entered the white Grand  
4 Prix had stolen items.

5   **Q.**   But you knew who that was, correct?

6   **A.**   No.

7   **Q.**   Okay. And in your report, you didn't say that the person  
8 that was still in the car was -- "Blank was a suspect who was  
9 observed stealing merchandise"?

10   **A.**   That's a clarification for that part of my report. I did  
11 not know that at the time, when I was approaching the vehicle,  
12 and, again, when I approached the vehicle I only saw Mr. Garza.

13   **Q.**   So you didn't say in your report when you approached the  
14 vehicle, that it was occupied by two male subjects?

15   **A.**   Sir, if it says that, it's just for clarification issues  
16 or to clarify for --

17   **Q.**   This document --

18   **A.**   -- the reader of the report.

19   **Q.**   This document is written as a summary of what happened on  
20 that day; is that correct?

21   **A.**   Correct, sir, summary.

22   **Q.**   Okay. And you're full and complete, when you use this --  
23 when you put this information in this document, correct?

24   **A.**   It's impossible to be full and complete. Again, it's a  
25 summary.

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1 Q. And you -- and you, at a certain point, anticipate you  
2 possibly using this document to refresh your recollection in  
3 the future, correct?

4 A. That's correct.

5 Q. Okay. Because you may not remember all the facts from a  
6 year ago, correct?

7 A. Correct.

8 Q. So this document is an important document in regard to  
9 what happened on that day, correct?

10 A. Yes, sir.

11 Q. And this tells anyone else who wasn't there what happened,  
12 correct?

13 A. Correct.

14 Q. Okay. And in this document, it says you approached the  
15 vehicle with two occupants. The redacted person was the  
16 suspect who was observed stealing, not Garza, correct?

17 A. Correct.

18 Q. So, you arrest Garza for shoplifting, yes?

19 A. Yes.

20 Q. Now, at a certain point, the passenger of the vehicle is  
21 questioned, correct?

22 A. Yes.

23 Q. He's taken to Meijer's loss prevention office to be  
24 questioned, correct?

25 A. No.

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1 Q. Okay. Do you recall where the person was taken to be  
2 spoken to about what happened?

3 A. Yes, to my police department.

4 Q. Okay. To your police department.

5 Are you aware or do you know -- never mind. You wouldn't  
6 be able to testify to that.

7 Strike that.

8 All right.

9 I would like to talk to you now in regard to this  
10 secondary inventory search; do you recall that?

11 A. Yes, sir.

12 Q. And in your report that you drafted, you called this a  
13 secondary inventory search; is that correct?

14 A. Correct.

15 Q. All right.

16 Now, this inventory search was conducted only after you  
17 received information from a co-occupant of the vehicle, turned  
18 informant, that there was a possible firearm in the car,  
19 correct?

20 A. Yes, sir.

21 Q. All right.

22 At the time you received that information, the vehicle is  
23 at the towing yard, correct?

24 A. Yes.

25 Q. Okay. Not occupied by Mr. Garza, because he's

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1 incarcerated at the time, correct?

2 **A.** Correct.

3 **Q.** Not readily moveable, meaning it hasn't been moved at any  
4 point, correct?

5 **A.** Not correct.

6 **Q.** Okay. It was in a police tow yard and the police  
7 authority?

8 **A.** No, sir.

9 **Q.** It was not under the police authority in the tow yard?

10 **THE COURT:** Isn't the testimony that it was at this  
11 private unenclosed towing lot in some relatively rural area?

12 **MR. LONGSTREET:** I don't recall what the testimony  
13 was and so I'm trying to get it out. I believe it was towed  
14 by -- for the police. It was in a tow yard. It was unattended  
15 by itself, not really moveable without the operator. My point  
16 was it wasn't a readily moveable vehicle that required a search  
17 warrant is my point, but I'm getting to that point. I'm  
18 developing that.

19 **THE COURT:** Okay.

20 **BY MR. LONGSTREET:**

21 **Q.** Now, sir, at a certain point, this car -- the occupant  
22 didn't have the keys to be able to move it right away, correct,  
23 the owner of the vehicle?

24 **A.** The owner, no, sir.

25 **Q.** Okay.

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1                   **THE COURT:** And by a certain point, you mean while  
2 it's sitting in the tow yard?

3 **BY MR. LONGSTREET:**

4 **Q.** While it's sitting in the tow yard?

5 **A.** Correct.

6 **Q.** Okay. Now, the vehicle, at that point, wasn't being  
7 inventoried to protect the police from frivolous or false  
8 claims of theft and/or missing items?

9 Did you understand the question?

10 **A.** I wouldn't agree with that.

11 **Q.** So you went back, specifically, to make sure that all of  
12 Mr. Garza's items were safely in the car at the time, that's  
13 what you went back for?

14 **A.** I would say it's liability for the police department to  
15 tow a vehicle that is unsecured that may contain a firearm.

16 **Q.** So your sole purpose was to make sure you were going to  
17 inventory everything in the car and make sure the first time  
18 you did an inventory search you didn't miss anything for the  
19 second one, correct?

20 **A.** Well, the new information was that there was potentially a  
21 firearm in the engine compartment of the vehicle.

22 **Q.** Got you.

23 **A.** Which is not an area typically known to contain property.

24 **Q.** So you were going to investigate the information you  
25 obtained from a new informant in regard to where a gun could be

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1 found in inside the car, correct?

2 **A.** I had information that property, a firearm specifically,  
3 might be in the engine compartment.

4 **Q.** And that --

5 **A.** The department's policy says that I'm to inventory areas  
6 known to contain property.

7 **Q.** Let me stop you there for a moment.

8 **A.** So I don't know.

9 **Q.** If you don't mind, may I stop you for a moment?

10 **A.** Sure.

11 **Q.** So your whole purpose was to go investigate the firearm?

12 **A.** I believe that's probably a pretext reason.

13 **Q.** You most certainly weren't doing anything at that point in  
14 the secondary search, inventory search to protect the interests  
15 of the vehicle owner, correct?

16 **A.** Well, it would probably expose him to liability as well if  
17 he had an unsecured firearm taken from his vehicle and used.

18 **Q.** Let me ask you this question: The only information you  
19 had in regard to where this information came from was or where  
20 this firearm came from was from an informant, correct?

21 **A.** I don't know if I would call him an informant. He was  
22 a --

23 **Q.** He was a co-occupant in the car, correct?

24 **A.** Correct.

25 **Q.** Okay.

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1 And he told you this way after the car had been towed,  
2 well after the arrest has been done and both persons are in  
3 police custody, correct?

4 A. Yes.

5 Q. Now, you had already conducted one inventory, correct?

6 A. Yes, sir.

7 Q. Okay. And you had inventoried everything that was in the  
8 car, correct?

9 A. Well, no.

10 Q. At that point, from what you knew, you had inventoried  
11 everything in the car the first time?

12 A. As far as I knew at the time, yes.

13 THE COURT: Can I ask a question? The first  
14 inventory search, was it conducted entirely pursuant to your  
15 department's inventory policy?

16 THE WITNESS: Yes, sir.

17 THE COURT: So to the extent your department's  
18 inventory policy tells you to search some part of the car, you  
19 would have done that during the first inventory search,  
20 correct?

21 THE WITNESS: Yes, sir. It says to inventory the  
22 vehicle and any areas of the vehicle that are known to contain  
23 property. It says, "known to contain property."

24 THE COURT: Okay.

25



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1 **BY MR. LONGSTREET:**

2 **Q.** All right. And you would say, to your own credit, the  
3 first time, you did a thorough inventory search?

4 **A.** Yes.

5 **Q.** Okay. And the only way that the second inventory search  
6 was necessitated was the information you received from a  
7 co-occupant slash informant?

8 **A.** Yes, sir.

9 **Q.** Otherwise, you wouldn't have done it, correct?

10 **A.** That's correct.

11 **Q.** All right. So the purpose of going out there was to check  
12 the accuracy of your informant's information?

13 **A.** It was to recover any firearm that might be present where  
14 he said it could be located at.

15 **Q.** Okay.

16 **MR. LONGSTREET:** I just want to make sure I covered  
17 everything.

18 **THE COURT:** Take your time.

19 **MR. LONGSTREET:** Thank you.

20 Defense has no further questions. Thank you.

21 **THE COURT:** All right. Mr. DePorre, do you have any  
22 follow up? I have just a couple. Do you mind if I ask mine  
23 first?

24 **MR. DePORRE:** If you'd go first, then I can...

25 **THE COURT:** Officer Fisher, can you tell me when the

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1 car is sitting in the impound lot, was it locked?

2 **THE WITNESS:** No, sir.

3 **THE COURT:** Is the impound -- excuse me, impound lot  
4 itself fenced in?

5 **THE WITNESS:** No, sir.

6 **THE COURT:** Why not apply for a warrant to search the  
7 car, the engine compartment, for the gun when you received that  
8 information from the co-occupant of the car?

9 **THE WITNESS:** These -- investigations like this  
10 are -- they do take a lot of time. I believe that incident  
11 took place at 9:15 in the morning, and even being that early, I  
12 didn't make it to my end of my shift at 6:00, with cataloging  
13 property and typing the report, which has to be done before I  
14 leave, and our department is not large. We don't really have  
15 extra people around to help out with that stuff, and then --  
16 and then type up search warrants and, basically, handle my  
17 investigation for me.

18 Honestly, it was the most efficient way that I  
19 believe that it would go is I believe that I had the authority,  
20 under the inventory search exception to the search warrant  
21 rule, to go back and search the engine compartment, because it  
22 is not an area typically known to contain property, as my  
23 department's policy says. With the information that there  
24 could potentially be that property there, I believe that fell  
25 under my department's inventory search policy, and, with that

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1 exception, I went ahead and used it and conducted that  
2 secondary inventory search.

3 **THE COURT:** Is there any other reason that you did  
4 not apply for a warrant, other than what you just told me?

5 **THE WITNESS:** No, sir.

6 **THE COURT:** All right. Thank you.

7 Mr. DePorre?

8 **MR. LONGSTREET:** I'll stipulate to the admission of  
9 the Government's Proposed Exhibit.

10 **MR. DePORRE:** This is the problem with continued  
11 hearings. I have no idea the number you left off at, your  
12 Honor?

13 **MR. LONGSTREET:** You left off on Government's Exhibit  
14 12, that being Government's 13.

15 **MR. DePORRE:** For safety purposes, I would like to  
16 mark this as Government Exhibit 20. I know I didn't get that  
17 high, and it is the inventory search policy for the Metro  
18 Police Authority of Genesee County.

19 At this point, with no objections from brother  
20 counsel, I would move for its admission.

21 **THE COURT:** Okay. That's admitted. Thank you. Do  
22 you happen to have an extra copy that I could read along with?  
23 I don't want to take your only copy.

24 **MR. DePORRE:** What I intended to do is submit a copy  
25 with the supplemental briefing that I anticipate the Court will

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1 request. This is my only copy. You're welcome to have it  
2 right now.

3 **THE COURT:** Do you need it to ask your questions?

4 **MR. DePORRE:** No.

5 **THE CLERK:** I can go make a copy.

6 **THE COURT:** Officer Fisher has his copy. So do you  
7 mind if I see yours while you're asking?

8 Thank you for sharing it.

9 **MR. DePORRE:** And I have no -- unless the Court  
10 has -- I'll give you a moment, your Honor, to look that over,  
11 and then if you have further questions, you can. Otherwise, I  
12 have no questions for the witness.

13 **THE COURT:** Okay.

14 Did you have questions on this policy?

15 **MR. DePORRE:** I do not. I just wanted to enter it as  
16 an exhibit. Brother counsel stipulated to it or agreed to its  
17 admission. Therefore, I don't have any questions for the  
18 witness.

19 **THE COURT:** All right. Mr. Longstreet, do you have  
20 any questions about this policy?

21 **MR. LONGSTREET:** Sir, no, sir.

22 **THE COURT:** Okay. I have a couple.

23 Officer Fisher, do you have the policy in front of  
24 you?

25 **THE WITNESS:** I do.

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1           **THE COURT:** In your answers this morning, I  
2 understood you to say that the policy provides that you are to  
3 inventory the areas of the vehicle that, in your words, are  
4 "known" to contain property. Can you direct me to where that  
5 language is in this policy?

6           **THE WITNESS:** Yes, sir. It's going to be under  
7 Section VIII; it's a Roman numeral. So it's under inventory --  
8 it says "inventorying vehicles."

9           **THE COURT:** I'm sorry, are you looking at me? I  
10 looked at number VII. I don't see those words.

11           **THE WITNESS:** It's under -- I was waiting for you to  
12 read it, sir. So VIII-A1 -- I guess I'll read it.

13           It says, "All areas of the vehicle which may contain  
14 property, including any containers, shall be checked."

15           **THE COURT:** Okay.

16           **THE WITNESS:** I used "known to contain." Obviously,  
17 here, it's "which may contain."

18           **THE COURT:** Okay. Is it your standard policy when  
19 conducting an inventory search -- let me try a better question.

20           Is it your department's standard practice, when  
21 conducting an inventory search under the policy that we've  
22 admitted as Exhibit 20, to search the engine compartment?

23           **THE WITNESS:** No, not typically, sir.

24           **THE COURT:** Okay. I don't think I have any other  
25 questions.

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1                   **MR. DePORRE:** I just have then one quick follow up.

2                   **REDIRECT EXAMINATION**

3                   **BY MR. DePORRE:**

4                   **Q.** Officer Fisher, why don't you normally check the engine  
5 compartment of a vehicle while conducting an inventory search  
6 pursuant to your department's policy?

7                   **A.** So I've been waiting for the right question to I guess  
8 bring this in. I wasn't really directly asked. So the only  
9 place that is usually checked in the engine compartment, if it  
10 is checked at all, is usually the -- we call it the air box or  
11 where your air filter is, because that is an area that weapons  
12 contraband drugs have been found in the past.

13                   I opened the hood at the scene, checked the air box and  
14 then closed it back up, shut the hood. So that is the only  
15 part of under the hood that was checked at the scene, but  
16 typically, beyond that, the engine compartment isn't searched  
17 at all.

18                   **Q.** And once you received additional information regarding the  
19 possibility that there was a gun in the hood area of the  
20 vehicle, did you conduct a more thorough search of the engine  
21 compartment?

22                   **A.** Yes, sir.

23                   **Q.** And did that include areas of the engine compartment other  
24 than the air box?

25                   **A.** Yes, sir.

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1 Q. In addition to the information -- I'm going to go back.

2 When you conducted the first inventory search of the  
3 vehicle at the Meijer parking lot, did you find ammunition  
4 within the vehicle?

5 A. Yes, sir.

6 Q. Do you recall the caliber?

7 A. I do not.

8 Q. Did you find multiple rounds of ammunition?

9 A. I believe I only found one.

10 Q. And do you recall where it was located?

11 A. It was between the driver's seat and the center console.

12 Q. If someone were to have an item in their pocket, would  
13 that be a likely -- and the item fell out of their pocket,  
14 their front right pants pocket, would that be a location where  
15 items would commonly fall out of a right front pants pocket?

16 MR. LONGSTREET: I would object. The question calls  
17 for speculation.

18 THE COURT: You can try to lay a foundation. You can  
19 ask if he had experience of stuff falling out of his pocket.

20 MR. DePORRE: Certainly.

21 BY MR. DePORRE:

22 Q. Have you ever had anything fall out of your right front  
23 pants pocket while in a motor vehicle?

24 A. Yes, sir.

25 Q. And did it fall right between the center console and the

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1 driver's seat, assuming that were you in the driver's seat when  
2 it happened?

3 **A.** Yes, sir.

4 **Q.** Did you in fact speak with, not just one, but two separate  
5 other individuals, besides Mr. Garza, after the shoplifting  
6 arrests?

7 **A.** Yes, sir.

8 **Q.** And one of the individuals was arrested at the scene with  
9 Mr. Garza?

10 **A.** Yes.

11 **Q.** And there was another individual who was in Meijer at the  
12 time that Mr. Garza was arrested?

13 **A.** Yes.

14 **Q.** Did you speak with that individual?

15 **A.** Yes, I did.

16 **Q.** And did that individual give you information about  
17 Mr. Garza opening the hood compartment to his vehicle at some  
18 point?

19 **A.** Yes, he did.

20 **MR. DePORRE:** I have no further questions.

21 **THE COURT:** Mr. Longstreet?

22 **MR. LONGSTREET:** No questions, Judge.

23 **THE COURT:** I just have a couple last questions.

24 Officer, the first inventory search that was  
25 conducted, was that while the vehicle was still in the Meijer



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1 parking lot?

2 **THE WITNESS:** Yes, sir.

3 **THE COURT:** And then Mr. DePorre's very last set of  
4 questions to you was about information from a third person who  
5 was in Meijer. Do you recall he just asked you that?

6 **THE WITNESS:** Yes, sir.

7 **THE COURT:** And I think you indicated that this third  
8 person provided information about Mr. Garza opening the hood of  
9 the vehicle; is that correct?

10 **THE WITNESS:** Yes, sir.

11 **THE COURT:** When did you receive the information from  
12 the third person about Mr. Garza opening the hood of the  
13 vehicle, was that before you conducted the first inventory  
14 search?

15 **THE WITNESS:** No, sir.

16 **THE COURT:** When was it, was it between the first  
17 inventory search and the second inventory search?

18 **THE WITNESS:** It was.

19 **THE COURT:** Okay. Thank you.

20 Anything else, Mr. DePorre?

21 **MR. DePORRE:** Not for the Government, your Honor.

22 **THE COURT:** Mr. Longstreet?

23 **MR. LONGSTREET:** Okay. Not from the Defense. Thank  
24 you.

25 **THE COURT:** Thank you for coming back a second time,

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1 Officer. Appreciate your time.

2 (Witness excused 10:24 a.m.)

3 **THE COURT:** Okay. So Mr. DePorre, I guess we were  
4 going to decide at this point what our next steps are, and,  
5 based on the testimony that's come in today, would it be your  
6 intention to call an additional witness?

7 **MR. DePORRE:** No, your Honor. I do not intend, at  
8 this point, to call any further witnesses.

9 **THE COURT:** All right. Mr. Longstreet, would you and  
10 Mr. Garza care to call any witnesses in connection with this  
11 hearing?

12 **MR. LONGSTREET:** At this time, no.

13 **THE COURT:** All right. I just want to be clear. At  
14 this time, meaning the way I'm thinking is, since the  
15 Government is resting, this would be your opportunity to  
16 present evidence, which I'm happy to have you present, but if  
17 you don't do it now, I wouldn't see another reconvening of an  
18 evidentiary hearing for you to present evidence.

19 **MR. LONGSTREET:** Let me be more specific: I don't  
20 believe there's any evidence at this point that the Defense  
21 needs to present. Everything has been presented through  
22 Officer Fisher, and the Defense is prepared to proceed.

23 **THE COURT:** All right.

24 So you're satisfied with the record that has been  
25 created thus far, and you're ready move ahead to the legal

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1 argument portion of these proceedings?

2 **MR. LONGSTREET:** Sir, yes, sir.

3 **THE COURT:** Thank you. Okay.

4 Mr. DePorre, you had briefly referenced the idea of  
5 supplemental briefs. I think that makes sense, especially  
6 given the gap of time between the two hearings. I have  
7 definitely memory of the first hearing, but seeing the actual  
8 testimony transcribed and addressed in a brief would be very  
9 helpful.

10 Mr. Longstreet, do you agree that supplemental  
11 briefing is in order here?

12 **MR. LONGSTREET:** That is absolutely necessary, and I  
13 would ask, before I make any legal arguments, that we get the  
14 transcript first.

15 **THE COURT:** Oh, yes, yes. What I'm -- the order of  
16 operations that I'm thinking of here is we order the  
17 transcript, and then once everybody has the transcript, the  
18 supplemental briefs are filed. I'll look at the briefs and  
19 decide if I need additional oral argument or if I can just  
20 decide it on the brief.

21 Does that work for you, Mr. DePorre?

22 **MR. DePORRE:** Yes, your Honor.

23 **THE COURT:** Mr. Longstreet?

24 **MR. LONGSTREET:** That works for the Defense, yes.

25 **THE COURT:** So do we know, has anybody ordered the

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1 first transcript? Mr. DePorre, have you?

2 **MR. DePORRE:** We have not. That first transcript was  
3 done with a different court reporter, who -- than the second  
4 transcript. However, we intend to order that today, and we  
5 will also order this transcript today.

6 What we would ask is that the parties -- I know it's  
7 Mr. Longstreet's motion, and he, at the original hearing,  
8 addressed to the Court that he wanted an opportunity to  
9 supplement his papers and briefings to address any potential  
10 issues he sees with the second inventory search, and so my  
11 proposal would be that he have, I would suggest, 21 days from  
12 the time that the transcript is completed for both hearings.  
13 So that 21 days from the latter of the two transcripts to  
14 submit a supplemental brief, and then I would have 14 days to  
15 respond to that.

16 **THE COURT:** Mr. Longstreet, does that work for you?

17 **MR. LONGSTREET:** Depending on how long the transcript  
18 is, that timetable would be agreeable. In regards to 21 days,  
19 depending upon how long the transcript is, I may want more  
20 time, depending on how long it takes to do the research, I may  
21 want more time.

22 **MR. DePORRE:** And I would certainly be amenable to  
23 stipulate to additional time if Mr. Longstreet needs it.

24 **THE COURT:** And I'd be happy to give you more time.  
25 Why don't we start with this: Our plan will be the transcripts

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1 will be ordered today. At some point, they'll be filed on the  
2 docket. Our current schedule would be Mr. Longstreet will file  
3 a supplemental brief 21 days from the date that the second  
4 transcript is filed on the docket, and Mr. DePorre would  
5 respond within 14 days. Mr. Longstreet, if you're getting in  
6 the vicinity of the 21 days and need more time, it's not a  
7 problem. Just reach out to Miss Monda -- Mrs. Ryan is her name  
8 now, telling how much time you want and copy Mr. DePorre, and  
9 it will be fine.

10 Mr. DePorre, same thing for you. If you're getting  
11 close to your 14 days and you're jammed for some reason or  
12 another and you need a little extra time, that won't be a  
13 problem.

14 **MR. DePORRE:** Thank you, your Honor.

15 **THE COURT:** But we'll start with this time frame.  
16 That work for you, Mr. Longstreet?

17 **MR. LONGSTREET:** It does, sir.

18 **THE COURT:** Okay. Let's talk about, certainly,  
19 issues that would be important to hit on in the supplemental  
20 briefs. Today, we were focused a lot on the issue of this  
21 inventory search, and I understood this to come up, if memory  
22 serves, at the last hearing, Mr. DePorre, you were suggesting  
23 that this inventory search is an independent basis to admit the  
24 weapon or an inevitable discovery or some combination of the  
25 two. I think one of the points that -- first of all, you guys

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1 brief whatever you think is appropriate, because you guys are  
2 the lawyers, but as I sit up here today, one of the things I'm  
3 thinking about is whether the second search qualifies as an  
4 inventory search, and I assume Mr. Longstreet will be  
5 developing the argument that it wasn't an inventory search  
6 because it was based on a tip, it wasn't based on their policy.  
7 It wasn't part of the original search. You'll be developing  
8 that argument.

9           There have to be cases like this where there's an  
10 original inventory search, additional information, and a second  
11 search, and federal courts are figuring out whether that second  
12 search also falls within the inventory search doctrine. So  
13 what would be really helpful, on this particular aspect of the  
14 dispute, is trying to find cases that are factually as similar  
15 to this as we can find. That's one thing that would be very  
16 helpful to me in thinking through this.

17           **MR. DePORRE:** Your Honor, I have two cases I can just  
18 give to the Court and to Mr. Longstreet at this point. They  
19 support the Government's position, but the first is an Eastern  
20 District of Michigan case *United States V Dowl*. It's 229  
21 F.Supp. 3rd 603 (2017) authored by --

22           **MR. LONGSTREET:** You said 229 F.Supp. what?

23           **MR. DePORRE:** 229 F.Supp. 3rd at 603. It's a 2017  
24 case authored by Judge Rosen -- Chief Judge Rosen, and then  
25 that case cites two Supreme Court cases, *Michigan V Thomas*,

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1 which is at 458 U.S. 259 (1982) and *Florida V Meijer's*, which  
2 466 U.S. 380 (1984).

3 **THE COURT:** And you're suggesting, Mr. DePorre, is  
4 that these are cases that are dealing with inventory searches  
5 or claimed inventory searches that occurred in two parts?

6 **MR. DePORRE:** Yes, your Honor, and also address the  
7 automobile exception as applied to impounded vehicles.

8 **THE COURT:** Okay. Well, that's helpful. So you can,  
9 again, Mr. Longstreet, find whatever cases you think are  
10 helpful, but you can anticipate Mr. DePorre's reliance on those  
11 and address those cases.

12 **MR. LONGSTREET:** We will.

13 **THE COURT:** Anything else, Mr. DePorre, for the  
14 record today?

15 **MR. DePORRE:** Not on behalf of the Government.

16 **THE COURT:** Mr. Longstreet?

17 **MR. LONGSTREET:** Nothing on behalf of the Defense.

18 **THE COURT:** Okay. Thank you both for your work  
19 today. I will look forward to reading these briefs, and we  
20 will convene oral argument on the legal issues if I think it's  
21 necessary after viewing the briefs.

22 Thank you very much.

23 We are adjourned.

24 **THE CLERK:** All rise. Court is in recess.

25 (Proceedings concluded 10:32 a.m.)

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**C E R T I F I C A T I O N**

I, Andrea E. Wabeke, official court reporter for the United States District Court, Eastern District of Michigan, Southern Division, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date hereinbefore set forth. I do further certify that the foregoing transcript has been prepared by me or under my direction.

/s/Andrea E. Wabeke  
Official Court Reporter  
RMR, CRR

March 27, 2022  
Date